

SUBJECT: Texas Clean Rivers Act

COMMITTEE: Natural Resources: favorable, with amendments

VOTE: 8 ayes — R. Lewis, Willy, Collazo, Bosse, Greenberg, Hilderbran, Puente, Yost

0 nays

1 absent — Haggerty

SENATE VOTE: On final passage, May 14 — 31—0

WITNESSES: (On original version of House companion):
For — Tommy Mason and Mark Rose, Lower Colorado River Authority (LCRA); Garry Mauro, Texas Land Commissioner; Dan McNamara, Sierra Club

Against — Stacie Lawson, Texas Farm Bureau; James R. Adams, San Jacinto River Authority; Frank Sturzl, Texas Municipal League; Bill Hilliard Jr., Little Cypress Utility District

On — William Bunch; Allen Beinke, Texas Water Commission

BACKGROUND: A river authority is essentially an extended, multi-county water district. The primary difference between river authorities and water districts is that river authorities have taken on the status of quasi-state agencies. Each river authority is established and operates pursuant to its own enabling statute. The boundaries of a river authority usually encompass the watershed of a particular river, although a single river may be served by one than one authority.

DIGEST: SB 818, as amended, the proposed Clean Rivers Act, would require the Texas Water Commission (TWC) to provide for the comprehensive regional assessment of water quality in each watershed and river basin of the state.

Water Quality Assessment. The bill provides that to conserve costs and avoid duplication of efforts, river authorities of ten counties or more, and

any other river authority or water district designated by TWC rule, would, to the greatest extent possible and under TWC supervision, conduct regional assessments of their watersheds. TWC, either directly or through cooperative agreements and contracts with local governments, would conduct the assessments when a river authority was unable to perform an adequate assessment.

The assessment would include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, the biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, significant regulatory or enforcement issues affecting the watershed and any other factors affecting the watershed's water quality. TWC would have the authority to establish the level of detail required in the assessments.

The assessment would be a continuing duty and would be revised as necessary to reflect changes in the factors. Its purpose would not be to mandate exhaustive and detailed water quality studies but to identify significant water quality issues and sufficient information for TWC, river authorities and other governmental bodies to take corrective action to maintain and improve water quality.

To assist in the coordination and development of assessments and reports, a river authority would organize and lead a basin-wide steering committee that would include representatives from all appropriate state agencies, local governments and other governments with an interest in the water quality of the watershed or river basin. Each committee member would assist in the identification of water quality issues and make available to the river authority all relevant water quality data in its territory including extraterritorial jurisdiction of a city. When there was more than one river authority located in a watershed, all would have to cooperate in making assessments and reports. A river authority would also develop a public input process for the regional assessment and reports.

Reports. Each river authority would be required to report biennially to the governor, TWC and Texas Parks and Wildlife Department (TPWD) on the assessment as well as on any actions taken by the authority and local governments to improve water quality. The assessment report would have

to identify legal, administrative, economic and other impediments to water quality efforts. TWC would then prepare a separate report summarizing each river authority's assessment, TWC's regional water quality assessment efforts, and TWC's past and proposed actions for water quality improvement. TWC would submit its report, along with comments and recommendations on regional water quality management, to the governor, lieutenant governor and the speaker of the house two months after the authorities submit their reports.

Fees and Costs of Program. TWC would apportion, assess, and collect fees to cover the costs of administering water management programs from water and wastewater permit holders in each watershed, in proportion to their water right or wastewater discharge permit. The costs of the cooperative assessments at the regional level would be subject to prior review and approval by TWC. TWC would be required to adopt rules to supervise and implement the water quality assessment and costs and ensure that fees are not excessive, that a river authority cannot recover more than the actual costs of administering water quality programs and that no city would be assessed costs for any efforts that duplicate its water quality management activities already required by Water Code sec. 26.177.

Implementation. TWC would have the primary responsibility for implementation of regional management functions, including enforcement actions. TWC would be required to coordinate by rule the water quality responsibilities of river authorities within each watershed and, when appropriate, would designate water quality functions to local governments. The bill specifies that nothing is intended to enlarge, diminish or supersede water quality powers, including enforcement, authorized for river authorities, the Soil and Water Conservation Board and local governments.

SB 818 would mandate to the greatest extent possible, that TWC require all permits for the discharge of waste within a single watershed to have the same expiration date and would require TWC to adopt and implement procedures for the simultaneous review and renewal of all of those permits. The bill specifies the purpose of this provision to be comprehensive evaluation of the combined effects of permitted discharges on water quality within the watershed and facilitating information from the public and others affected by waste discharges.

Solid waste. Each river authority would be encouraged and authorized, but not required, to manage solid waste and to facilitate and promote programs for the collection and disposal of household consumer and agricultural products that contain hazardous substances and could contaminate water if disposed of improperly. Such programs could include the establishment of a permanent collection site, mobile collection sites, periodic collection events or other methods.

Texas Water Development Board involvement. The bill would require that all financial assistance from the Texas Water Development Board (TWDB) to a city of 5,000 or more would be conditioned on the city's already required submission to TWC for review of its water control and pollution abatement program. The bill would authorize the TWDB to awards grants from the research and planning fund of the Water Assistance Fund to river authorities for performing regional water quality assessments.

TWC and the TWDB would be required to adopt rules to carry out the water quality protection within 180 days after the bill's effective date.

In developing its water quality standards, TWC would be required to also consider the existence and affects of nonpoint source pollution, toxic materials and nutrient loading.

**SUPPORTERS
SAY:**

The water quality of Texas rivers and lakes has been increasingly threatened by a wide array of pollutants, and the state's rapid population growth has exacerbated the problem. Along with water pollution from municipal sewage plants and industrial facilities, state waters suffer from harmful urban runoff and other forms of nonpoint source pollution. TWC lacks adequate resources to monitor and protect the 80,000 miles of Texas rivers and lakes. With general supervision from TWC, river authorities and water districts are uniquely situated to implement state water quality management policies on a regional watershed basis and could provide a much more cost-effective means of protecting Texas water resources.

SB 818 would realize the inter-connection among rivers, lakes and streams in its management scheme and look to all parts of a river. Dry washes and

creeks carry water and pollutants from towns, cities and farm and ranch land to streams, which run into other bodies of water.

Texas rivers face a variety of problems from both point source and nonpoint source pollution as a mixture of state and local agencies works towards prevention and abatement. SB 818 would approach river pollution from a comprehensive regional level that would consider the whole watershed or individual river system in analyzing the source of pollution and the regulatory authority necessary to clean up the rivers.

The bill would enhance TWC efforts by putting the force of state law behind local efforts to keep water clean. It also is important to keep in step with potential federal requirements to avoid losing that funding.

SB 818 appropriately only would include those river authorities of ten counties or more, since the bill's strict requirements could burden some of the smaller river authorities that might not be able to carry out the provisions of the bill.

The bill would give river authorities no additional enforcement authority and TWC remains the agency with primary responsibility for water quality enforcement. The bill specifies that it is not intended to enlarge or diminish the authority or the obligations of cities in regard to their water pollution control and abatement programs. The bill would not remove any permitting power from TWC nor delegate any enforcement authority for nonpoint source pollution control to any municipal utility district. Enforcement would still rest with TWC and cities of 5,000 or more.

Currently, TWC cannot give grants to cities that do not have water pollution control and abatement programs in place as required by the Water Code. Very few cities have complied since compliance was not required until 1989. This bill would give TWC an added enforcement tool to encourage compliance by making grants an incentive for developing plans. The bill would make river authorities also eligible for TWDB grant funds to be used for water quality assessments.

If river authorities were unable to conduct adequate assessments, then TWC would be responsible for accomplishing this task. When an assessment

could be better conducted by a cooperative agreement between TWC and local governments that option would be available.

The bill would require the involvement of local government and state agencies in a committee process that would encourage citizen involvement in developing the assessments. The assessments are not intended to be exhaustive scientific studies involving expensive consultants but a review of existing data and significant water quality issues.

The river-by-river watershed assessments would be reported to TWC and be a valuable tool to both TWC and the Legislature in designing programs, policies and laws to keep the rivers clean.

The bill also authorizes certain river authorities to engage in solid waste activities, as many already do. Many hazardous wastes, particularly liquids, end up in the rivers because citizens dispose of them improperly. This bill encourages river authorities to engage in programs which publicize collection programs for toxins such as pesticides and cleaning fluids.

One of the bill's most important features is its requirement that TWC look at the *cumulative* effect of all permitted discharges into a given river system. This would allow a simultaneous review of permits to determine the effects of point source discharges. Without this bill, the total impact of wastewater discharge permits on a river would never be considered. Currently, TWC is only able to discuss one permit at a time, and not in terms of a total river's quality.

While some costs would be passed on to the local governments, it makes sense for the people on a river basin to be responsible for the protection of that river. A wastewater crisis is much more expensive than planning efforts and there is a definite need to address nonpoint source pollution.

Agriculture is a major nonpoint source pollution contributor to all rivers. The special water districts have been a significant environmental problem also and this bill would encourage local governments in the same region to check and pressure each other towards more aggressive environmental stances.

This bill would assesses fees only on surface water users and would not affect the property rights of groundwater users.

OPPONENTS
SAY:

This bill would levy a tax on waste-water discharge permit holders, who already pay for the privilege of discharging waste water. All of the people in the river basin should pay for the cost of planning endeavors since the bill intends to benefit the whole community which eventually consumes that water in some way.

This bill would shift the emphasis away from use of surface water to groundwater by imposing a tax on those who already have a surface water right. Hydrologic studies have established the interconnection between groundwater and surface water — this bill should charge all water users, particularly since nonpoint source pollution often flows through groundwater.

SB 818 would assign too large a responsibility to the underfunded and understaffed river authorities.

Sufficient water quality regulations already exist pertaining to agriculture, and this bill would lead to more state mandates and regulations. LCRA has indicated in the past that water entering the Highland chain of lakes is not a problem for water quality, but that runoff from individual yards in cities and auto emissions are the main culprits.

Nonpoint source pollution oversight is properly placed with the State Soil and Water Conservation Board which has extensive programs. This bill could lead to TWC and TWDB having final authority in the area of water quality and a duplication of efforts by state agencies.

This bill would add yet another layer of state oversight to cities which already recognize the importance of nonpoint source pollution as an environmental concern and are regulated by a federal as well as a state agency. There is no assurance that SB 818 would not prevent duplication.

This bill is unnecessary because TWC already has the authority to address water quality issues.

OTHER
OPPONENTS
SAY:

The bill should include all of the river authorities in the state because pollution and degradation of water quality occurs regardless of the size of the river or its governing authority.

The bill should require all river authorities and special districts to develop and implement nonpoint source pollution control programs. The bill should also carry penalties for failure to develop assessment and reports, such as disapproval of bonds.

This bill fails to give the Legislature opportunity to require particular water quality management actions based on the resulting assessments. There is currently no statewide water quality management plan, and the bill would not specifically route these assessments and reports towards that goal.

While any efforts by river authorities to pressure cities into being more environmentally aggressive is a positive step, only one river authority is even able to assume that role with a city. This bill may simply hinder Austin's environmental efforts by allowing river authorities to coordinate assessments and reporting activities.

River authorities are the improper point of coordination of assessment. The bill should allow local groups to operate on a smaller segment, such as sub-basin, basis. It would be cumbersome for local groups to wrangle with entire river basins and the effects of a large number of permits.

While this bill would foster more discussion at the local level, more specific rules concerning local government representation on the steering committee and their exact roles in formulating reports and assessment would probably have to be developed in the future to avoid large governmental entities strong-arming smaller ones.

The bill should include incentives and rewards for river authorities which make successful efforts.

NOTES:

The first committee amendment would requires TWC to recover costs of programs from water users and discharge-permit holders according to the proportion of their water rights and waste water discharge permits. It also would require TWC to adopt rules to review cost recovery to insure that water users do not pay excessively to authorities.

The other amendment would add that the water pollution and abatement programs submitted for review to TWC must be in accordance with rules and submission schedules promulgated by TWC.